

CRIMINAL APPEAL NO.415 SB OF 1993

DATE OF DECISION: AUGUST 24, 2007

L.R.Kaushal

.....Appellant

VERSUS

The State of Punjab

....Respondent

CRIMINAL APPEAL NO.416 SB OF 1993

L.R.Kaushal

.....Appellant

VERSUS

The State of Punjab

....Respondent

CRIMINAL APPEAL NO.417 SB OF 1993

L.R.Kaushal

.....Appellant

VERSUS

The State of Punjab

....Respondent

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Salil Bali, Advocate, for
Mr. Ramesh Dimri, Advocate,
for the appellant.

Mr. Shailesh Gupta, Sr.DAG, Punjab,
for the State.

RANJIT SINGH J.

Appellant, L.R.Kaushal, has filed the abovesaid three separate

appeals, against three judgments dated 12.10.1993 containing similar allegations. For disposal of these appeals, facts are being taken from Criminal Appeal No.415 SB of 1993 (**L.R.Kaushal Vs. The State of Punjab**).

Appellant L.R.Kaushal and his co-accused C.S.Rana were charged and prosecuted for an offence under Sections 409, 477A IPC and under Sections 5(2) read with 5(1)(c) of the Prevention of Corruption Act, 1947. Upon trial, C.S.Rana was acquitted whereas the appellant was convicted for an offence under Section 409 IPC and under Section 5(2) of the Prevention of Corruption Act. The appellant was sentenced to undergo RI for 3 years coupled with fine of Rs.500/- under Section 409 IPC. He was further sentenced to undergo similar period of RI and fine upon his conviction under Section 5(2) of the Prevention of Corruption Act. Both the sentences were made to run concurrently with the further direction that he would undergo 3 months RI in case of default of payment of fine.

The appellant was working at Naya Nangal, a Government of India undertaking, which used to produce nitric acid for sale to the private parties. As per the prevalent procedure in the year 1981-82, nitric acid so produced was required to be supplied to the parties against the bank draft. On receipt of bank draft, the cash sale advice was to be prepared, indicating the particulars of the bank draft, quantity of nitric acid supplied, rate, amount and tanker number with the driver's name. The appellant was posted as a Sales Officer in the Marketing Division of the National Fertilizer Limited at Naya Nangal whereas his co-accused C.S.Rana was posted as Assistant

Clerk. The cash advises referred to above were prepared by the said Section. As per the allegation, on 1.1.1982, Mohan Singh, Driver of Tanker No.RRB-8085 handed over an amount of Rs.17,000/- in cash to the appellant for purchase of nitric acid on behalf of M/s Chaudhary Chemical Industries, Delhi. The appellant got prepared a sale advice from his co-accused, C.S.Rana and signed the same. On the sale advice so prepared, bank draft No.157871 was mentioned. On investigation, it was found that supply against the bank draft No.157871 dated 30.12.1981 was quoted in cash sale advice made on the said date to M/s Chaudhary Chemical Industries, Bahalgarh. This reference of the bank draft was a fictitious entry in the cash sale advice. As per allegation, the driver of the tanker, Mohan Singh, handed over a sum of Rs.20,000/- in cash to the appellant. Following the similar procedure as afore-mentioned, Bank Draft No.022919 dated 14.1.1982, showing sale of 114.60 MT nitric acid was prepared. Entry regarding supply of the material was prepared but no amount was deposited in the account of National Fertilizer Limited and the bank draft mentioned was also found to be fictitious. These amounts were mis-appropriated by the appellant. Similarly, a cash of Rs.3000/- handed over to the appellant by one Chandrika Parshad of M/s New Bharat Chemical Industries, Ludhiana, led to preparation of the documents in the manner as afore-mentioned. The bank drafts mentioned in the said sale documents were not given by the concerned party nor the same were accounted for in the books. It is accordingly alleged that the appellant had caused a loss of Rs.37,700/- and, thus, committed offences under Sections 407, 477A read with Section 120-B IPC alongwith provisions of Prevention of

Corruption Act. In judgment under appeal in Criminal Appeal No.416 SB of 1993, the allegations are that on 8.6.1981, Jagir Singh, driver of Tempo No.PUQ-511 representing M/s Khana Sales had handed over ten thousand in cash to the appellant for supply of the nitric acid. Though the supply was made but the cash received by the appellant was not deposited in the accounts of the National Fertilizer Limited and, thus, mis-appropriated. In a similar manner, an amount of Rs.16,000/- received on 2.11.1981 on behalf of the same company through Mulkh Raj, Driver, and another sum of Rs.16,000/- received on 17.11.1981 on behalf of M/s National Chemical Trading Company were mis-appropriated by not depositing the said amount into the account of fertilizer Company. In Criminal Appeal No.417 SB of 1993, the allegations are for mis-appropriating a sum of Rs.33,000/- in all on two separate occasions on 1.2.1982 and 3.5.1982 in similar manner by receiving Rs.16,000/- and Rs.17,000/- in cash respectively but not accounting for the same in the accounts of the Company, where the appellant was working.

In each case, the prosecution examined witnesses in support of the charge against the appellant. The appellant denied the allegations made against him and brought out that no procedure for payment was laid down at the relevant time. He also denied the allegation of mis-appropriation or embezzlement as alleged. The trial Court, after analyzing the evidence, found the appellant guilty of the charge and sentenced him as stated. The appellant filed the present three appeals in the year 1993.

Learned counsel appearing for the appellant points out that the incident pertained to the year 1981-82 and the cases were

registered on 3.9.1985. After prolonged trial, the appellant was convicted and sentenced on 12.10.1993. Since then his appeals are pending before this Court. His co-accused C.S.Rana was acquitted. Appellant was aged 66 years at the time of decision of the case and by now is 80 years old. The counsel is justified in pleading that requiring the appellant to undergo the sentence at this old age and after 14 years of his conviction, may not sound very fair and just.

The conceded position is that the incidents pertained to the year 1981-82. The appellant has faced this prosecution and trial since the year 1985 and stands convicted in these cases since October 1993. This happened 14 years ago. He is now of an advanced age of 80 years. I have otherwise viewed the evidence in the light of allegations made. There is no merit in the appeal. Considering the delay entailed in conclusion trial of the appellant, it may not sound equitable at this belated stage to require him to undergo the remaining portion of the sentence. As per the learned counsel, the appellant has undergone a period of about 3-4 months of RI.

Accordingly, the appeals are dismissed on merits and the sentence awarded to the appellant is reduced to the period already undergone. The bail bonds, if any, furnished in the trial Court shall stand discharged.

August 24, 2007
Khurmi

(RANJIT SINGH)
JUDGE